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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,579	01/12/2001	Robert F. Heard	91805001	1809

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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT PAPER NUMBER

3635

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/759,579

Applicant(s)

HEARD ET AL.

Examiner

Yvonne M. Horton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-13 and 15-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12,13 and 15-19 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,7-11 and 20 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Other: SEE THE ATTACHED EXHIBIT

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,2,4,5,7-11 and 20 stands rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,836,123 to GULINO. Regarding claims 1 and 20, GULINO discloses the use of a decorative member (701,801) including a solid rectangular portion (RP), similar to rectangular wing portions (303) each having a length (L) that is greater than a width (W) thereof, and a thickness (T), see the marked attachment. The rectangular portion further includes a top surface (704,804) and a bottom surface (705,805) wherein the bottom surface (705,805) overlies the building as shown in figure 1. The decorative member of GULINO also includes a flange portion (713,714) and (818) in parallel relationship with the bottom surface (705,805); wherein the flange (713,714) and (818) extend beyond the width (W) of the rectangular portion. The planar bottom surface (705) is structurally configured (by having extending portions (713,714)) which are used to attach to the surface of a building similarly to (313,314), column 5, line 55-60. GULINO also discloses the use of a channel (710,810) formed between the flange portion (713,714) and (818) and the top surface (704,804) wherein the channel is adapted to receive a siding member (S), see the marked attachment. GULINO discloses the basic claimed decorative member except for explicitly detailing that his member is a "brickmold" and except for detailing that sidings of two differing thickness may be accommodated

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by the channel. Although GULINO does not explicitly detail his decorative member as being a "brickmold", he does detail that his decorative member is a corner trim piece. Corner trim pieces, trim pieces, and brickmolds are art recognized equivalents for their use in providing external decorative devices to a structure. As provided by a "Google" internet word search in the marked attachment, *brickmould* is defined as a decorative moulding used to finish the exterior face of a wood frame at a wall joint; an exterior trim that covers a seam between jamb and wall; or an exterior type of casing which frames windows and doors. Further, the applicant is reminded that the manner in which a device is employed does not differentiate the claimed device from a prior art apparatus satisfying the same structural limitations. Hence, although the device of GULINO is a corner trim device, it is a trim device that satisfies all of the structural limitations of the claimed apparatus. In regards to the siding thicknesses, due to the step portion (colored red in the marked attachment of figure 8), it would have been obvious to one having ordinary skill in the art at the time the invention was made that the channel (710,810) is fully capable of being adapted to receive a siding have differing thicknesses. In reference to claim 2, the decorative device of GULINO includes a decorative portion that is carried by the top surface, column 4, lines 21-26 and column 7, lines 53-61. Regarding claim 4, the flange (713,14) and (818) is integral with the decorative device. In reference to claims 5 and 7, the flange (713,714) and (818) is integrally affixed to the planar bottom surface (705) and affixed to the building by a fastening means such as a nail, column 8, lines 24-27. Regarding claim 8, although GULINO does not detail the

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use of a screw per se', he does detail the use of a nail. Nail and screws are art recognized equivalents. The only requirement that GULINO has is that the fastening means not be cleated. Screws, being similar to nails are not cleated. Hence, it would have been obvious to one having ordinary skill in the art that the selection of either the nail or screw would have been well within the general skill of a worker in the art. In reference to claim 9, GULINO does not detail the use of adhesive as a type of fastening means; however, nails, screws, glue and adhesives are also art recognized equivalents for their use in the art as securing means. Again, the selection of either would have been an obvious matter of design choice. Nail or screws might be employed if the type of decorative member is made from a material that does not secure well with an adhesive; whereas an adhesive might be employed alone or in addition to a nail or a screw. When an adhesive is used along with nails or screws, usually, the adhesive is used to provide added protection in securing the members. Regarding claim 10, the flange (713,714) and (818) also includes holes (715,815) for receipt of the fasteners. In reference to claim 11, the decorative device of GULINO is made from a polyvinyl chloride. GULINO does not explicitly detail whether his PVC is cellular; however, PVC is commonly available in the art in a cellular form and a resinous form. The selection of either would have been an obvious matter of design choice. Both cellular and resinous PVC plastics have similar properties or characteristics and function similarly. Hence, the selection of either would have been well within the general skill of a worker in the art. In further regards to claim

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20, GULINO also discloses the use of a step portion, colored red in the marked attachment.

Allowable Subject Matter

Claim 6 remains objected to as being dependent upon a rejected base claim, but would be allowable for the reasons indicated in the previous Official Actions if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 12,13 and 15-19 remain as being allowed for the reasons indicated in the previous Official Actions.

Response to Arguments

Applicant's arguments filed 7/13/04 have been fully considered but they are not persuasive. Regarding the applicant's argument that the device of GULINO is a corner device and not a "brickmould" and is therefore "not functionally equivalent" due to the "matching process" with the underlying building structure; the applicant is reminded that the manner in which a device is intended to be employed does not differentiate the device from a prior art device satisfying the claimed structural limitations. As provided by a "Google" internet word search in the marked attachment, *brickmould* is defined as a decorative moulding used to finish the exterior face of a wood frame at a wall joint; an exterior trim that covers a seam between jamb and wall; or an exterior type of casing which frames windows and doors. In no event does any of the definitions suggest that the "brickmould" cannot be a corner piece. As a matter of fact, if a "brickmould" is an external casing which frames window and door, conceivably,

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window and door frames have corners. If a "brickmould" is a casing that covers windows and doors, then the "brickmould" is a casing that covers "the corners" of the window and door frames (i.e. a corner frame). The manner in which the devices attach to an underlying structure are method considerations and are not given patentable weight in apparatus claims.

In response to the applicant's argument that the device of GULINO does not attach to a single planar surface of a building structure; clearly, the device of GULINO has two bottom surfaces (705), one that attaches to one wall surface and another that attaches to an adjacent wall surface. Although the device of GULINO has two bottom surfaces (705), it remains that only one planar bottom surface (705) of GULINO makes contact with only one building surface at a time. Even though one planar bottom surface (705) on one side makes contact simultaneously with the other each surface only contacts one building surface.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the device of GULINO must be stacked and the device of the instant applicant does not) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703) 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne M. Horton
Examiner
Art Unit 3635

10/22/04



Carl D. Friedman
Supervisory Patent Examiner
Group 3600

FIG. 2

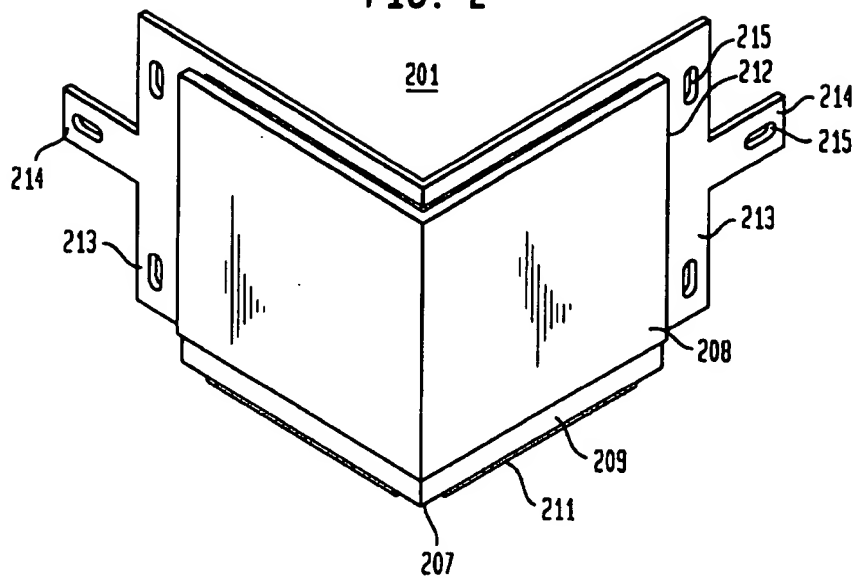
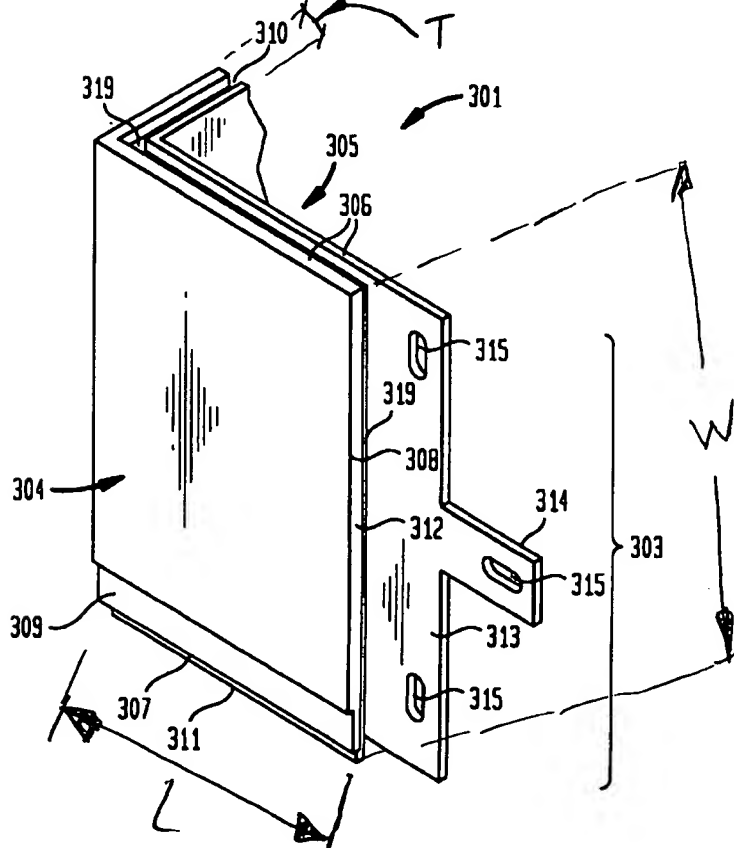
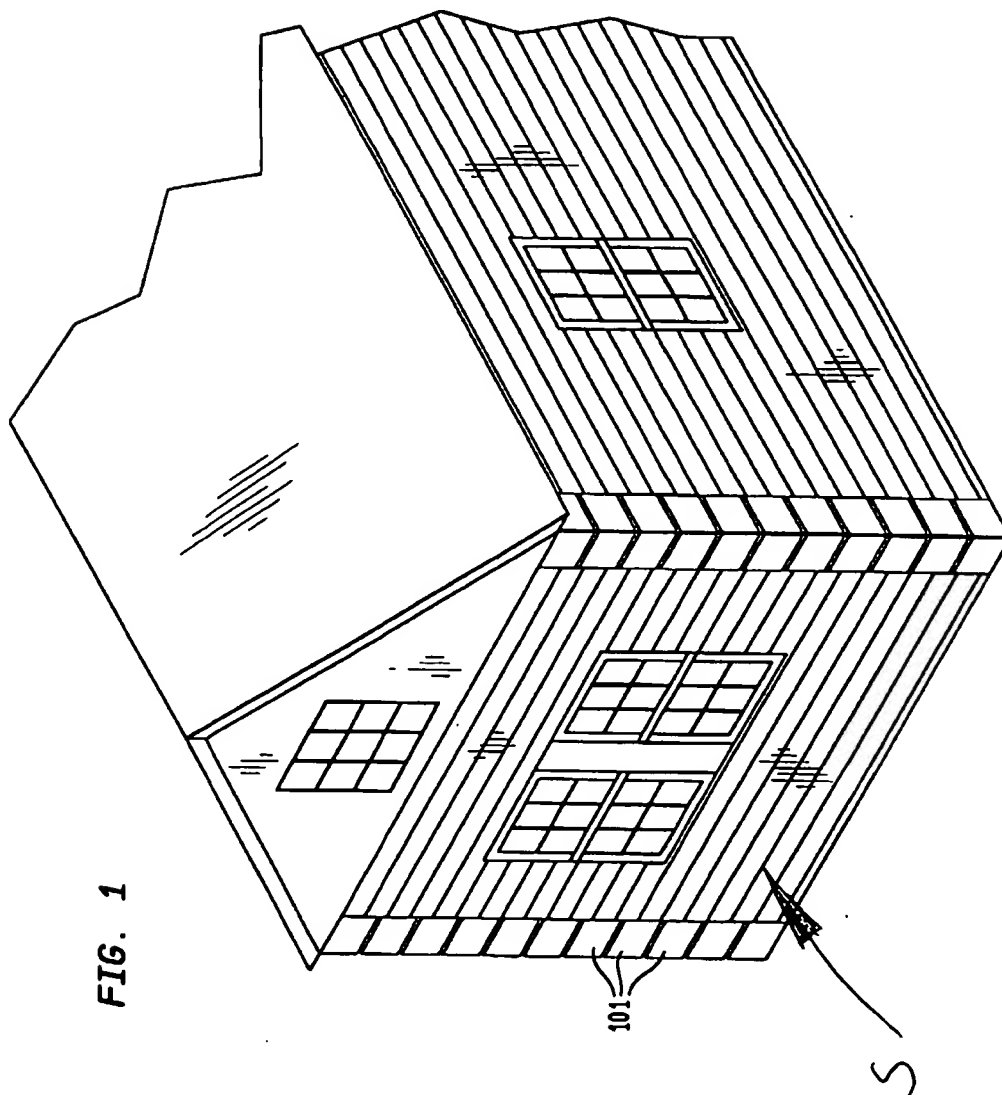


FIG. 3



EXHIBIT



EXHIBIT

FIG. 7

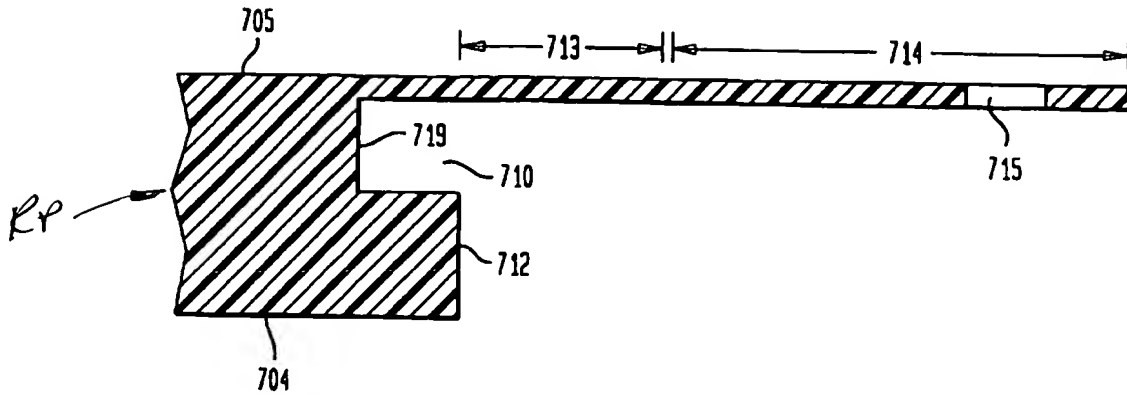
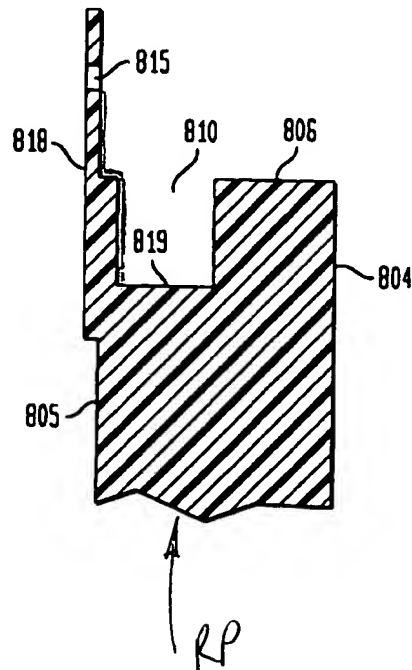


FIG. 8



EXHIBIT

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Web

Tip: Try [Google Answers](#) for help from expert researchers

Definitions of **Brickmold** on the Web:

(AKA "brickmould" see below)

www.kolbe-kolbe.com/glossary.shtml

A decorative molding used to finish the exterior face of a wood frame at a wall joint.

www.benchmarkdoors.com/trouble8.htm

Exterior trim that covers seam between jamb and wall.

www.crdoors.com/glossary.html

A type of external casing which frames windows and doors.

www.window sidingpros.com/glossary.htm

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